

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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JILL O'KEEFE and ROBERT O'KEEFE,

Plaintiffs,

96 CV 1418
MEMORANDUM
AND
ORDER

-against-

HONDA MOTOR CO., LTD. and
AMERICAN HONDA MOTOR CO., INC.

Defendants.

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LAW OFFICES OF TOM STICKEL, ESQ.
225 Broadway, Suite 1607
New York, New York 10007-3001
for plaintiffs.

LESTER SCHWAB KATZ & DWYER
120 Broadway
New York, New York 10271-0072
for defendants.

NICKERSON, District Judge:

In a Report and Recommendation dated March 31, 1998
and subsequently adopted by this Court, Magistrate Judge
Robert M. Levy recommended that Honda's motions to
dismiss and for summary judgment be denied. He also
ordered plaintiffs to show cause in writing, on or before
April 17, 1998, why monetary sanctions should not be

imposed upon them for their failure to comply with discovery demands in a timely manner.

By letter dated April 21, 1998, defendants filed an objection to the Report and Recommendation. This objection is untimely. A party may request a judge to reconsider a magistrate judge's report and recommendation within ten days of being served with a copy of the order. 28 U.S.C. § 636(b)(1). Applying the normal rules guiding the timeliness of appeals, defendants had 10 business days to file and serve objections after the magistrate's order was entered, which is counted as the date on which the order was signed. IUE AFL-CIO Pension Fund v. Herrmann, 9 F.3d 1049, 1054 (2d Cir. 1993). Even providing for an additional three days where service is by mail, Fed. R. Civ. P. 6(e), defendants' objection was due on or before April 17, 1998.

Even if the objections had been timely filed, they have no merit. The defendants argue that the motor scooter proffered as the one involved in the accident was not the actual motor scooter at issue. In support of this contention, they offer a certified document from the

Ministry of Finance of the City of Cozumel to Rentadora Miguel dated August 9, 1996 to show that the circulation plate number P195N was attached to a motor scooter with a VIN number different from that of the damaged motor scooter. As noted by Magistrate Judge Levy, this document at most creates a triable issue of fact, precluding the issuance of summary judgment.

This Court reaffirms its adoption of Magistrate Levy's report and recommendation.

So ordered.

Dated: Brooklyn, New York
April 27, 1998


Eugene H. Nickerson, U.S.D.J.